

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of B.B.)	
Petitioner)	
)	
And)	CAUSE NO. 110415-74
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On July 21, 2010, Petitioner completed the student portion of an IHSAA Athletic Transfer Report ("Transfer Report"). The Transfer Report requested that the Indiana High School Athletic Association ("IHSAA") make an athletic eligibility determination for the 2010-2011 school year relating to Petitioner's transfer from Salem High School ("Salem") to Brownstown Central High School ("Brownstown"). On August 4, 2010 and August 5, 2010, Salem, as the sending school, and Brownstown, as the receiving school, completed their respective portions of the Transfer Report. The Transfer Report was filed with the IHSAA on August 5, 2010.

On August 5, 2010, the IHSAA Assistant Commissioner ("Commissioner") for the IHSAA determined that Petitioner's transfer fell under Rule 19-6.2, Limited Eligibility When Transfer Without of Change of Residence by Parent(s)/Guardian(s), and therefore, Petitioner would have limited eligibility until May 27, 2011.

In the fall of 2010, following the IHSAA decision, Petitioner sought an appeal of the IHSAA's ruling of limited eligibility through the IHSAA Review Committee ("Review Committee"). Due to an incident involving Petitioner, Petitioner withdrew his appeal.

In 2011, Petitioner again sought an appeal of the IHSAA's August 5, 2010 decision.¹ On March 13, 2011, the IHSAA sent a letter to Petitioner acknowledging receipt of Petitioner's request for appeal and provided Petitioner with a Notice of Hearing and Agenda setting a hearing before the Review Committee for March 25, 2011.

On April 4, 2011, based on the testimony and evidence presented at the March 25, 2011 hearing, the Review Committee issued its ruling wherein it upheld the decision of the Commissioner, which determined that Petitioner would have limited eligibility at Brownstown until May 27, 2011.

APPEAL TO THE CASE REVIEW PANEL

On April 15, 2011, Petitioner appealed to the Indiana Case Review Panel,² and the Panel notified the parties that it would review the IHSAA Review Committee's decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the Panel. On May 10, 2011, the Panel held a meeting where a quorum of members was present.³ In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

FINDINGS OF FACT

1. Petitioner lives with his parents in Salem, Indiana within the Salem school district.
2. Petitioner attended Salem during his freshman year (2009-2010) and played on the junior varsity football and basketball teams and varsity track team. As a sophomore (2009-2010), Petitioner played on the varsity baseball and football teams and the junior-varsity basketball team. Petitioner last participated in athletics at Salem on May 27, 2010.

¹ As noted in paragraph 11 in the Conclusion of Law section, while the record does not contain the date of the second request for appeal Petitioner sent to the IHSAA, the evidence in the record, as well as 17-4.2 of the IHSAA bylaws relating to the timing of a hearing after an appeal is initiated, indicate that Petitioner's second request for appeal was filed sometime in early 2011.

² The Case Review Panel (Panel) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The Panel, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

³ Five members were present at the meeting, including Mr. Pat Mapes, (chairperson), Ms. Dana Cristee, Mr. Michael Golembeski, Mr. Keith Pempek and Ms. Cathy Ann Klink. Mr. Matt Voors attended the meeting as counsel to the Panel.

3. During his sophomore year, Petitioner began getting in trouble and socializing with students his parents did not approve. In response to a specific incident, Petitioner began seeing a counselor who recommended Petitioner change schools to remove Petitioner from Salem and his friends at the school.
4. Based on the counselor's advice and in an effort to place Petitioner in a more rigorous academic setting, Petitioner's parents withdrew him from Salem and enrolled him at Brownstown.
5. On July 21, 2010, Petitioner and his parents completed the student portion of an Transfer Report requesting that the IHSAA make an athletic eligibility determination for the 2010-2011 school year relating to Petitioner's transfer from Salem to Brownstown.
6. Both Salem, as the sending school, and Brownstown, as the receiving school, completed their respective portions of the Transfer Report, and the Transfer Report was filed with the IHSAA on August 5, 2010.
7. On August 5, 2010, based on the information presented, the Commissioner ruled that Petitioner would receive limited eligibility under 19-6.2 of the IHSAA bylaws because (1) a bona fide move did not occur; and (2) the decision to transfer was within the control of the parents.
8. As a result of the ruling, the Commissioner ruled that Petitioner would gain full eligibility to participate in athletics at Brownstown 365 days from the date Petitioner last participated in athletics at Salem or May 28, 2011.
9. In the fall of 2010, Petitioner sought an appeal of the IHSAA's ruling of limited eligibility. Due to an incident involving Petitioner, Petitioner withdrew his appeal.
10. Thereafter, consistent with the Commissioner's ruling of limited eligibility, Petitioner played two sports for Brownstown at the junior varsity level.

11. In 2011, Petitioner again sought an appeal of the IHSAA's August 5, 2010 decision of limited eligibility.⁴ On March 13, 2011, the IHSAA sent a letter to Petitioner acknowledging receipt of Petitioner's request for appeal and provided Petitioner with a Notice of Hearing and Agenda setting a hearing in front of the Review Committee for March 25, 2011.
12. As evidenced from testimony before the Review Committee, Petitioner and his parents do not question the IHSAA determination of eligibility, Salem's decision, nor appeal the IHSAA's interpretation of hardship. Rather, Petitioner and his parents' sole request is that the Review Committee consider Petitioner's case as a general hardship under 17-8.1 as the length of time Petitioner has had limited eligibility served a sufficient penalty.
13. On April 4, 2011, based on the testimony and evidence presented at the March 25, 2011 hearing, the Review Committee issued its ruling wherein it upheld the decision of the Commissioner, which determined that Petitioner would have limited eligibility at Brownstown until May 27, 2011.
14. On April 15, 2011, Petitioner filed an appeal of the Review Committee's decision with the Case Review Panel.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the

⁴ As noted in paragraph 11 in the Conclusion of Law section, while the record does not contain the date of the second request for appeal Petitioner sent to the IHSAA, the evidence in the record, as well as 17-4.2 of the IHSAA bylaws relating to the timing of a hearing after an appeal is initiated, indicate that Petitioner's second request for appeal was filed sometime in early 2011.

IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).

3. The Case Review Panel (“Panel”) has jurisdiction in this matter. The Panel is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 et seq. The Panel has jurisdiction when a student’s parent refers the case to the panel not later than thirty (30) days after the date of the IHSAA decision. I.C. 20-26-14-6(b). In this matter, the Review Committee rendered a final determination of student-eligibility adverse to the Petitioner on April 4, 2011, and Petitioner sought timely review on April 15, 2011.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. I.C. 20-26-14-6(c)(3).
5. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a “meeting,” I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. See I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
6. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. See Carlberg, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” Id. citing Dep’t of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000, 1007 (Ind. 1989). Additionally, the Panel reviews whether an IHSAA decision is
not a fair and logical interpretation or application of the association’s rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction,

authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

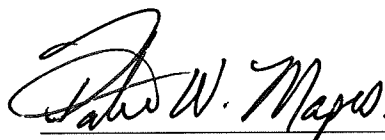
7. Section 17-3.1 identifies a Commissioner's authority with regard to Transfer Reports and provides "...upon referral of an Athletic Transfer Report for determination... the Commissioner...shall...review the matter and render a decision."
8. Section 17-4.1 sets forth the procedure for a party to appeal the decision issued by the Commissioner. That section explains that any affected party may appeal the decision issued by the Commissioner to the IHSAA Review Committee for review and hearing. That section further provides that "[a] request for appeal must be by written request to the Association within seven (7) days of the date of mailing of the decision of the Commissioner or his designee; otherwise, the decision shall be final."
9. In this case, the Commissioner issued his ruling on August 5, 2010, wherein he determined that Petitioner's transfer was a Rule 19-6.2 transfer, and therefore, Petitioner would have limited eligibility until May 28, 2011.
10. Evidence presented by Petitioner at the Review Committee hearing indicates that Petitioner timely filed his first appeal; however, due to an incident involving Petitioner, Petitioner withdrew his appeal.
11. While the record does not contain the date of the second request for appeal Petitioner sent to the IHSAA, the evidence in the record, as well as 17-4.2 of the IHSAA bylaws relating to the timing of a hearing after an appeal is initiated, indicate that Petitioner's second request for appeal was filed sometime in early 2011.
12. The time a party has to appeal a decision issued by the IHSAA is not unlimited. Section 17-4.1 requires an affected party appeal a decision issued by a Commissioner within seven (7) days.

13. While Petitioner may have timely filed his first appeal, that appeal was withdrawn and Petitioner chose to comply with the determination of limited eligibility and played two sports on the junior-varsity level.
14. Rather than finishing the year on limited eligibility, Petitioner initiated a second appeal well outside the seven (7) day window to appeal the decision of the Commissioner's determination of limited eligibility. As a result, Petitioner's appeal is untimely unless there is a basis for relief from the final decision.
15. Section 17-5.1 provides an avenue for a party to seek relief from the Review Committee's decision in limited circumstances. That section states:
- [w]hen a decision has been made...by the Committee, there shall be no review thereof except upon a showing of newly discovered evidence, which by due diligence could not have been timely presented and which is directly related to the finding in the case, or that there was fraud, misrepresentation or other misconduct of a party or witness, or that there was a prejudicial error in the procedure that was followed in the processing of the case.
16. Absent from the record is any evidence demonstrating Petitioner requested or would be entitled to relief from the decision under Section 17-5.1 under the IHSAA bylaws.

ORDER

Because Petitioner failed to timely file an appeal pursuant to the IHSAA bylaws, the decision reached by the Commissioner is final. As a result, the panel finds by a vote of 5-0, Petitioner will have limited eligibility to participate in athletics at Brownstown until May 27, 2011 and will be fully eligible to participate in varsity sports at Brownstown High School on May 28, 2011.

DATE: May 19, 2011



Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.